REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SELECTIVE TIMBER EXPORTS PHILS. INC.,
Petitioner,

- versus -

C.T.A. CASE NO.5263

HON. GUILLERMO C. PARAYNO, as the Commissioner of the BUREAU OF CUSTOMS,
Respondent.

Promulgated:

MAR 02 1998

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DECISION

In the case at bar the issue which is presented for our consideration is whether or not petitioner is guilty of misdeclaration in Entry (Section 2503, Tariff and Customs Code), thus, subjecting the imported articles to forfeiture in favor of the government (Section 2530, *ibid.*).

Petitioner is a domestic corporation registered with the Board of Investments as a manufacturer/exporter of builders woodworks. Its products which are for export, consist of doors, door jambs, mouldings, cornices, architraves, shelves, parquetry, wooden carvings, among others. Due to alleged scarcity of good materials locally and the government's restriction on logging, petitioner has to import plywood.

On November 21, 1994, a shipment of plywood imported by petitioner from Malaysia arrived at the Port of Manila aboard the vessel M/V "WAN LI", Reg. No. P1D-1015, covered by Bill of Lading No. WLIMNL-01 and was consigned to Phil. Exporters Confederation, operator of Customs Common Bonded Warehouse No. M-1045, for the account of

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the petitioner. The shipment was declared under Entry No. 121811-94 as STC 584 Crates containing 495.459 cubic meters (M3) or (CMS) of plywood.

A day after, or on November 22, 1994, Mr. Jorge Salazar, president of the petitioner company, filed an Import Entry Declaration No. 10770663 under which he declared the shipment to be about 500 cubic meters of plywood with a value of US$ 760.00 per cubic meter. To be able to claim said shipments and to reflect that the shipment consisted of 584 crates with a volume/measurement of 495.459 cubic meters of plywood, petitioner presented the Import Authority, dated September 1, 1994, issued by Phil. Exporters Confederation, the Certificate of Origin-ASEAN Preferential Trading Arrangements executed by the exporter, Borneo United Sawmills Sdn. Bhd., and the SGS Clean Report of Findings No. MYS 013948, dated November 14, 1994.

Upon examination of the shipment, the Customs Intelligence and Investigation Service (CIIS) discovered that the 584 crates contained 1,038.35 cubic meters of plywood and not 495.459 cubic meters as declared by the herein petitioner. Thus, the CIIS theorized that there was a misdeclaration in the entry, hence, the District Collector of the Port of Manila issued a Warrant of

Seizure and Detention of said shipments on January 19, 1995.

The case was heard before the said District Collector of Customs, after which the latter rendered a decision on the matter, the dispositive portion of which states:

> "**WHEREFORE**, by virtue of the authority vested in me by law, it is hereby ordered and decreed that the 495.459 cubic meters of plywood be **RELEASED** in favor of the claimant, **SELECTIVE TIMBER EXPORT PHILS.**, INC., upon posting of a re-export bond and compliance with laws and regulations pertinent thereto while the excess shipment of 542.85 cubic meters be **FORFEITED** in favor of the government and be disposed of in the manner provided for by law."

On June 15, 1995, respondent **MODIFIED** the decision of the District Collector and thereby **ORDERED** that the entire shipment be forfeited in favor of the government, the decretal portion of which is quoted hereunder:

> "In view of the foregoing, the decision of the Collector of Customs, Port of Manila, releasing the declared 495.459 CMS of plywood in favor of the claimant upon posting of a re-export bond and forfeiting the excess shipment of 542.85 CMS of plywood in favor of the government is hereby **MODIFIED**, by ordering that the entire shipment shall be forfeited.
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> The District Collector of Customs, POM is hereby instructed to dispose of the whole shipment in the manner provided for by law.
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> **SO ORDERED.**"

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Hence on July 4, 1995, petitioner filed with this Court the instant petition for review.

In the course of the trial, the declared shipment of 495.459 cubic meters of plywood were ordered by this Court **RELEASED** to the petitioner upon posting a surety bond in the amount of P14,434,180.62.

As earlier adverted to at the outset, the issue to be resolved by the Court is whether or not petitioner is guilty of misdeclaration in entry under Section 2503 of the Tariff and Customs Code, as amended by Republic Act 7651, thus subjecting the imported articles to forfeiture under Paragraphs (F) and (L), sub-paragraphs 3, 4, and 5 of Section 2530. Sections 2503 and 2530 are quoted hereunder, to wit:

> SEC. 2503. ***Undervaluation, Misclassification and Misdeclaration in Entry.*** - When the dutiable value of the imported articles shall be so declared and entered that the duties, based on the declaration of the importer on the face of the entry, would be less by ten percent (10%) than should be legally collected, or when the imported articles shall be so described and entered that the duties based on the importers description on the face of the entry would be less by ten percent (10%) than should be legally collected based on the tariff classification, <u>or when the dutiable weight, measurement or quality of imported articles is found upon examination to exceed by ten percent (10%) or more than the entered weight, measurement or quantity, a surcharge shall be collected from the importer in an amount of not less than the difference between the full duty and the estimated duty based upon twice of such difference: Provided, That an undervaluation, misdeclaration in</u>

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weight, measurement or quantity of more than thirty percent (30%) between the value, weight, measurement, or quantity declared in the entry, and the actual value, weight, quantity, or measurement shall constitute a *prima facie* evidence of fraud penalized under Section 2530 of this Code: Provided, further, That any misdeclared or undeclared imported articles/items found upon examination shall *ipso facto* be forfeited in favor of the Government to be disposed of pursuant to the provisions of this Code.

When the undervaluation, misdescription, misclassification or misdeclaration in the import entry is intentional, the importer shall be subject to the penal provision under Section 3602 of this Code." (Underscoring supplied)

"SEC. 2530. ***Property Subject to Forfeiture Under Tariff and Customs Law.*** -Any vehicle, vessel or aircraft, cargo, article or other objects shall, under the following conditions be subject to forfeiture:

x x x

(f) Any article the importation or exportation of which is effected or attempted contrary to law, or any article of prohibited importation or exportation, and all other articles which, in the opinion of the Collector, have been used, are or were entered to be used as instruments in the importation or exportation of the former;

x x x

(L) Any article sought to be imported or exported:

(1) x x x

(2) x x x

(3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article;

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> (4) On the strength of a false invoice or other documents executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article; and
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> (5) Through any other practice or device contrary to law by means of which such articles was entered through a customhouse to the prejudice of the government."

Petitioner presents the argument that it is not guilty of any misdeclaration since it merely relied on the representations made by the exporter/supplier and by the *Societe Generale de Surveillance* (SGS). Petitioner presented evidence to support its claim, such as the Sales Invoice which shows that the supplier/exporter described the shipment as STC 584 crates or 495.459 cubic meters at US$ 760.00 per cubic meter; the Certificate of Origin under the ASEAN Preferential Trading Arrangement which also shows that the supplier again declared that the shipment as 584 crates or 495.459 cubic meters; and the Bill of Lading of the shipment which unequivocally described it as plywood STC 584 crates S.T.M. or 495.459 cubic meters. Petitioner stressed that all the aforesaid documents were furnished by the supplier and/or shipper, thus, no misdeclaration should be attributed to her.

Further, petitioner emphasized that the subject shipment was inspected and passed upon by the *Societe Generale de Surveillance* (SGS), the Philippine Government's official representative at the Port of

Origin, as to the value, quantity and quality of the shipment. Petitioner, also presented as its evidence the SGS Clean Report of Findings which shows that indeed the shipment consists of 584 crates or 495.459 cubic meters of plywood, and the fax message from the supplier/exporter which shows that it was the exporter who committed a grave mistake in the delivery of the subject shipment, thus, it should not be faulted, on relying on the information provided for by SGS and on the errors of the supplier/exporter.

Taking the cue from the case entitled **Farolan vs. Court of Tax Appeals and Bagong Buhay Trading, 217 SCRA 298,** petitioner invokes the decision of the Supreme Court:

> "In defense of its position denying the commission of misdeclaration, private respondent contends that its import entry was based solely on the shipping documents and that it had no knowledge of any flaw in the said documents at the time the entry was filed. For this reason, private respondent believes that if there was any discrepancy in the quantity of the goods as declared and as examined, such discrepancy should not be attributed to Bagong Buhay.
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> Private respondent's argument is persuasive. Under Section 2530, paragraph m, subparagraphs (3) and (4), the requisites for forfeiture are: (1) the wrongful making by the owner, importer, exporter or consignees of any declaration or affidavit, or the wrongful making or delivery by the same persons of any invoice, letter or paper-all touching on the importation or exportation of merchandise; and (2) that such declaration, affidavit, invoice, letter or paper is false.

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> In the case at bar, although it cannot be denied that private respondent caused to be prepared through its customs broker a false import entry or declaration, it cannot be charged with the wrongful making thereof because such entry or declaration merely restated faithfully the data found in the corresponding certificate of origin, certificate of manager of the shipper, the packing lists and the bill of lading which were all prepared by its suppliers abroad. If, at all, the wrongful making or falsity of the documents above-mentioned can only be attributed to Bagong Buhay's foreign suppliers or shippers.
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> With regard to the second requirement on falsity, it bears mentioning that the evidence on record, specifically, the decisions of the Collector of Customs and the Commissioner of Customs, do not reveal that the importer or consignee, Bagong Buhay Trading, had any knowledge of any falsity on the subject importation.
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> Since private respondent's misdeclaration can be traced directly to its foreign suppliers, Section 2530, paragraph m, sub-paragraphs (3) and (4) cannot find application."

Respondent Commissioner of Customs demurs and maintains that petitioner failed to rebut the legal presumption of fraud under Section 2503 of the Tariff and Customs Code, and that the bringing in of the excess shipment was with the knowledge and consent of the petitioner because it is against the law of nature and human experience for goods worth millions of pesos to find its way to the country if the same were not really ordered and imported by the petitioner, thus, the whole shipment should be forfeited in favor of the government.

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Further, he states that the Bagong Buhay Trading case does not apply in the case at bar since the absolute want of knowledge was absent. He stressed that petitioner was informed by the supplier thru a fax message on November 22, 1994 about the discrepancy in the quantity of goods that were actually shipped but the same was concealed by her by not correcting her declaration in entry No. 121811 or inform the Collector of Customs about it until such time that the discrepancy was discovered by the CIIS.

We find nothing obscure nor ambiguous in the language of Section 2503 taken in relation to Section 2530, both of the Tariff and Customs Code, insofar as the same is brought into the situation of petitioner in the case at bar. The provision by itself furnishes the best means of its own exposition and that is, when an importer misdeclared the weight, measurement or quantity of the articles imported by more than thirty percent (30%), between the declared and the actual weight, measurement or quantity, it establishes a fact or a presumption that there was fraud in the importation, thus, should be subject to penal sanctions under Section 2530 of the same Code. Understood to mean what it plainly expressed, misdeclaration presupposes prior knowledge of the exact amount, weight, measurement, etc., to be known to the public, thus, intention is material. As correctly cited by the petitioner, in the Bagong Buhay Trading case, the

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Supreme Court has ruled that "the fraud contemplated by law must be actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some right."

Since petitioner was able to establish by evidence that her mistakes/misdeclaration was due to her supplier/exporter's errors, Section 2530, paragraphs (f) and (L), sub-paragraphs 3, 4 and 5 of the Tariff and Customs Code do not apply. Albeit, there was a facsimile message sent by the supplier to the petitioner regarding the overshipment, the same should not be counted against petitioner since it came to her knowledge only after the filing of the entry and during the examination of the respondent's representatives. Portions of the testimony of Mrs. Estelita Suan, an employee of the petitioner, on February 9, 1995 before hearing officer Atty. Alameda of the respondent's Bureau, pages 73 and 72 of the Customs Records, is hereby quoted <u>in toto</u>; thus:

Q. When for the first time did you know that the shipment is alleged to be over excess of the quantity covered by this IED?

A. After the filing of the entry and during the examination.

Q. Were you present when the examination was conducted for the shipment?

A. No Sir.

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Q. When informed of the alleged over-quantity what did you do?

A. I informed my boss, Mr. Salazar. Then he instructed me to inform the supplier.

Q. How did you inform them?

A. By overseas call.

Q. To whom did you talk to?

A. To the Manager, Mr. Lao.

Q. After talking the matter with the supplier, what did he do?

A. He was surprised and told me to call me back. The following day he sent a fax.

The above testimonies of the petitioner's witness which were not controverted by the respondent clearly shows that petitioner has no prior knowledge of the overshipment or excess quantities. Thus, it would be unfair to treat the alleged mistakes of the petitioner as tainted with fraud. Hence, only the excess shipment of 542.89 cubic meters (not the total shipment of 1,038.35 cubic meters that actually arrived) of plywood should be forfeited since these constitutes the portion of the total /actual shipment which were misdeclared or undeclared which, according to Section 2503 of the Tariff and Customs Code, shall be *ipso facto* forfeited in favor of the government and to be disposed of pursuant to the provision of the Code.

WHEREFORE, finding the petition meritorious, respondent's decision is hereby set aside and the bond

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specifically Western Guaranty Corporation bond no. G(16)00473, earlier posted for the release of the declared shipment of 495.459 cubic meters of plywood, by this means discharged, subject to the condition that the correct duties, taxes, fees and other charges, thereon, if any, be paid to the Bureau of Customs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals

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